STATE OF MICHIGAN

COURT OF APPEALS

DENICE KLASK and DOUGLAS KLASK,

Plaintiffs-Appellants,

v

ALPINE VALLEY SKI AREA, an assumed name of SKIING UNLIMITED, INC.,

Defendant-Appellee.

UNPUBLISHED
March 6, 2003

No. 239399
Oakland Circuit Court
LC No. 01-030166-NO

Before: Kelly, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(8) and (10) in this ski injury case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs waited to board a ski lift while one of defendant's employees shoveled snow from the boarding area. When the lift operator motioned for them to board the lift, the other employee continued shoveling and hit Douglas Klask's skis with the shovel, causing him to lose his balance and fall into Denice Klask. Denice Klask in turn lost her balance and was hit by the chair, throwing her to the ground and injuring her knee. The trial court granted defendant's motion for summary disposition, finding that liability was barred by the Ski Area Safety Act, MCL 408.321 *et seq*.

MCL 408.342(2) provides:

> Each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow and ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment.

In *McCormick v Go Forward Operating Ltd Partnership*, 235 Mich App 551, 553; 599 NW2d 513 (1999), the plaintiff was injured when she attempted to avoid a skier who had fallen outside the exit area of a chairlift, but in the path of the skiers leaving the lift. This Court held

that "by statute, the Legislature has determined that collisions with other skiers, without regard to the area in which the collision occurs, is a necessary and obvious danger of skiing for which the ski area operator is not liable." *Id.,* 555.

In *Kent v Alpine Valley Ski Area, Inc,* 240 Mich App 731; 613 NW2d 383 (2000), the plaintiff was injured while attempting to assist his grandchild in boarding the chairlift. The Court found that the plaintiff's claim was barred by the Ski Area Safety Act where the injury was a result of a collision with the chairlift. The chair was a component of a ski lift tower, which was one of the statutorily enumerated dangers, and the reasonableness of the skier's or operator's conduct is rendered irrelevant to the application of immunity. *Id.,* 743-744.

Denice Klask's injury was caused by collisions with another skier and a ski lift component. The operator's conduct is irrelevant to the application of immunity. Where plaintiffs' claim is controlled by published decisions, their citations to unpublished opinions of this Court are not persuasive. MCR 7.215(C). The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra